



State of New Jersey

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DEPARTMENT OF HUMAN SERVICES
DIVISION OF FAMILY DEVELOPMENT
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TRENTON, NJ 08625-0716

NATASHA JOHNSON
Assistant Commissioner

The following Decision is distributed for your information. This Decision has been made in consideration of the specific facts of this case. This Decision is not to be interpreted as establishing any new mandatory policy or procedure otherwise officially promulgated.

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

FINAL DECISION

OAL DKT. NO. HPW **06969-22 D.P.**

AGENCY DKT. NO. **C143916001 (ATLANTIC CO. DEPT OF FAM. & COM. DEV)**

Petitioner challenges the correctness of the Respondent Agency's notice to recoup Emergency Assistance ("EA") benefits that were overpaid to Petitioner as a result of Petitioner receiving continued assistance pending a fair hearing. The Respondent Agency maintains that Petitioner received EA benefits to which he was not entitled, as a result of his failure to timely report unearned income. Because Petitioner appealed, the matter was transmitted to the Office of Administrative Law ("OAL") for a hearing. On September 9, 2022, the Honorable Catherine A. Tuohy, Administrative Law Judge ("ALJ"), held a telephonic plenary hearing, took testimony, admitted documents into evidence. The record remained open to allow Respondent to submit additional documents, and the record then closed on September 12, 2022, after Respondent had submitted same. On September 16, 2022, the ALJ issued an Initial Decision, affirming the Agency's notice to recoup EA benefits issued to Petitioner.

No Exceptions to the Initial Decision were filed by either party.

As Assistant Commissioner, Division of Family Development ("DFD"), Department of Human Services, I have reviewed the record in this matter, and I hereby MODIFY the Initial Decision, and MODIFY the Agency determination, based on the discussion below.

An overpayments of benefits is defined as a financial assistance payment, including emergency assistance, received by or for an eligible assistance unit, which exceeds the amount for which that assistance unit was eligible. The county or municipal agency shall seek recovery of all overpayments, including emergency assistance, regardless of fault, including overpayments caused by administrative action or inaction and overpayments resulting from assistance paid pending hearing decisions. See N.J.A.C. 10:90-3.21(a)(1) (emphasis added).

An independent review of the record reflects that Petitioner had received EA benefits since June, 2021. See Exhibit R-1 at 20-21. Pursuant to an Intra-Agency Referral, the Agency discovered that Petitioner had been receiving Unemployment Insurance Benefits ("UIB") since August, 2020, and that on October 5, 2021, Petitioner received a lump sum amount of \$15,776 in UIB, and thereafter, received weekly UIB in the amount of \$544. See Initial Decision at 2; see also Exhibit R-1 at 13,



14-18. The Agency then determined that Petitioner had the available funds, and the capacity to prevent homelessness, and by notice dated October 15, 2021, terminated his EA benefits, effective November 1, 2021. See Initial Decision at 2; see also Exhibit R-1 at 43-46, and N.J.A.C. 10:90-6.1(c).

The record further indicates that Petitioner requested a fair hearing on that EA termination, as well as on terminations of Work First New Jersey/General Assistance (“WFNJ/GA”) and Supplemental Nutrition Assistance Program (“SNAP”) benefits, and on November 16, 2021, Petitioner was granted continued assistance of all benefits, including EA, pending the outcome of the fair hearing. See Exhibit R-1 at 47. Documentary evidence in this case shows that continued assistance in the form of EA benefits was, in fact, paid for November and December, 2021, in the amount of \$690 per month, or \$1,380 total. Id. at 41. Petitioner in this case acknowledges, and the records of this office substantiate, that on the date of his fair hearing, December 17, 2021, Petitioner withdrew his request for a fair hearing on all issues. See Initial Decision at 3. Because Petitioner did not go forward with the fair hearing, the Agency terminations remained as issued, with EA benefits being terminated effective November 1, 2021. See Exhibit R-1 at 44.

Thereafter, in July, 2022, the Agency sought to recoup the overpayment of the continued assistance benefits for EA paid in November, 2021, through December, 2021, totaling \$1,380, while Petitioner’s prior fair hearing was pending. See Initial Decision at 3; see also Exhibit R-1 at 23-25, 28.

The ALJ found that the Agency had met its burden in establishing, by a preponderance of the credible evidence, that Petitioner had received an overpayment of EA benefits in November, 2021, and December, 2021, which must be repaid. See Initial Decision at 5. Accordingly, the ALJ concluded that the Agency is entitled to reimbursement for the overpayment of EA benefits, in the amount of \$1,380, and affirmed the Agency’s determination seeking to do so. Ibid. While I agree with the ALJ’s ultimate conclusion in this matter, as shown by the facts outlined above, the overpayment in this case is, in fact, due to Petitioner receiving continued assistance benefits pending his prior fairing. See N.J.A.C. 10:90-3.21(a)(1). I note that at the point when Petitioner withdrew that prior fair hearing request, or if he had lost that prior fair hearing, Petitioner then became responsible for repayment of the continued assistance benefits that had been issued to him pending the fair hearing because the EA termination of November 1, 2021, then remained in effect as issued. Ibid.; see also Exhibit R-1 at 47 (stating that if the fair hearing decision is not in Petitioner’s favor, benefits paid after the effective date of the termination(s) will be subject to recovery). The Initial Decision and the Agency’s determination are both modified to reflect the proper basis of the overpayment in this matter.

By way of comment, the transmitted issue pertaining to an overpayment of WFNJ/GA benefits was resolved, and the transmitted issue regarding an overissuance of SNAP benefits was waived by the Agency. See Initial Decision at 1-2. As such, those transmitted issues are not addressed in this Final Agency Decision.

Based on the foregoing, the Initial Decision is hereby MODIFIED, and the Agency’s determination is also MODIFIED, as outlined above.

I ORDER and direct that the Agency proceed to recoup the overissuance.

Officially approved final version.

October 4, 2022

Natasha Johnson

Assistant Commissioner

